

1. General

1.1 In these conditions:

- a) “*Cleartech*” means Cleartech Group Limited (Company No: SC264196) whose trading address is at 17 Langlands Avenue, Kelvin South Business Park, East Kilbride G75 OYG together with any Appendices Hereto;
- b) “*Subcontractor*” means the Subcontractor or Supplier of Goods or Services as set out in the Subcontract Order. Reference to the Subcontractor shall include the Subcontractor’s employees, any approved Sub-Subcontractors and any other party for whom the Subcontractor is responsible;
- c) “*Subcontract*” means the contract between Cleartech and the Subcontractor;
- d) “*Subcontract Sum*” means the agreed price for the works stated in the Subcontract Order; The Sum payable to the sub-contractor for carrying out the works, exclusive of VAT (unless identified accordingly) subject to retention, CIS, CITB or any other statutorily required deductions, fixed and firm expecting where either the works are varied and valued by the terms of this Agreement or by supplemental agreement.
- e) “*Subcontract Order*” means the Order issued by Cleartech identifying the works to be carried out by the Subcontractor as completed by Cleartech. Signature of the Subcontract Order shall have the same effect as executing these terms and conditions as a Deed;
- f) “*Cleartech’s Employer*” means the party with whom Cleartech has entered into a contract with;
- g) “*Main Contract*” means the contractual agreement between Cleartech’s Employer on the project and Cleartech;
- h) “*The Subcontract Works*” means all of the work to be carried out by the Subcontractor in accordance with these conditions as set out in the Subcontract Order.
- i) “*Day*” means a calendar day unless otherwise stated.

1.2 Communications in writing include all communications in printable (letter, fax or email) form received by either party at their usual place of relevant business.

1.3 This Subcontract incorporates the terms and conditions of the Main Contract between Cleartech and the party whom has engaged or employed Cleartech on this project. The Subcontractor is deemed to have full knowledge of all the Terms and Conditions in the Main Contract (excluding information relating to payment periods, prices and rates), which are available for inspection by appointment upon request at Cleartech offices. The Subcontractor shall perform the obligations of Cleartech under the Main Contract as though it was named as the Party which Cleartech is named within that Main Contract, in respect of carrying out the Subcontract Works and all other administrative obligations imposed by the Main Contract.

1.4 The Subcontractor has withdrawn all additional terms, qualifications or limitations within any pre-Subcontract Correspondence, tender or quotation or updated version(s) of such. Clarifications shall only apply if specifically appended to this Subcontract as a Schedule of Clarifications. The Subcontract Agreement shall constitute the entire agreement between Cleartech and the Subcontractor.

2. Ambiguities

2.1 Where there is an ambiguity or conflict between the provisions of the Main Contract and the Subcontract, the Subcontractor shall notify Cleartech as soon as it becomes aware of such and Cleartech shall issue any necessary clarification or instruction to resolve, which shall be at no additional cost to Cleartech. These terms and conditions shall be construed as being jointly drafted by the Parties.

3. Subcontractor Obligations

3.1 The Subcontractor shall carry out and complete the Subcontract Works including all variations notified to him in writing. The Subcontractor shall carry out and complete the Subcontract Works regularly and diligently within the Subcontract Period and in conformity with the directions and requirements of Cleartech, in a good and workmanlike manner and in accordance with the Health & Safety Plan using only materials and workmanship of an

appropriate quality and standard, all to the reasonable satisfaction of Cleartech. The Subcontractor shall carry out any design, as required under or implied by the Subcontract. The Subcontractor shall complete its works with due regard to other site operations of Cleartech or Cleartech's Employer and its agents and Subcontractors. The Subcontractor shall coordinate its works with all other interfacing parties to avoid services clashes and preventable delays.

- 3.2 The Subcontractor will complete the works in accordance with the Subcontract Order and any agreed programme of works.
- 3.3 If the Subcontractor fails to complete the Subcontract Works, or any section thereof, within the period(s) specified or any validly extended period, he shall pay Cleartech any loss or damage suffered or incurred by Cleartech caused by the failure of the Subcontractor, including but without limitation any liability incurred by Cleartech to pay liquidated and ascertained damages under the Main Contract. Cleartech shall give notice at any time that such loss or damage is being suffered or has been incurred or is likely to be incurred.
- 3.4 The Subcontractor may be entitled, subject to making a valid application, to an extension of the date for completion, if and to the extent that completion is or will be delayed by any of the following factors:
- (a) A Variation, properly issued under the terms of this Subcontract;
 - (b) Exceptionally adverse climatic conditions;
 - (c) Any delay, impediment or prevention caused by or attributable to Cleartech, Cleartech's Employer, or others on site.

If the Subcontractor considers himself to be entitled to an extension of time and/or additional payment, under this or any other clause of the Subcontract or otherwise in connection with the Subcontract, the Subcontractor shall, as a condition precedent to any such claim, give notice as soon as reasonably practicable, and in any event not later than 5 days after the Subcontractor became aware, or should have become aware of the event or circumstance. The Subcontractor shall throughout maintain detailed contemporaneous records of all material factors affected by any delay and submit these to Cleartech weekly. Following the service of the notice the Subcontractor shall submit particulars in as much detail as is available within 14 days of such notification. If the Subcontractor fails to give valid notice of a claim, or provide adequate records, or subsequent particulars, within the periods stated in this sub-clause the time for completion shall not be extended, the Subcontractor shall not be entitled to additional payment, and Cleartech shall be discharged from all liability in connection with any such claim under the Subcontract and otherwise at law.

- 3.4a The Subcontractor will comply with any Site Operating Rules and any additional rules previously communicated to the Subcontractor.
- 3.5 The Subcontractor shall provide a safe method for carrying out the Subcontract Works and shall comply with all relevant legislation during the execution of the Subcontract Works. This includes but is not limited to all relevant health and safety legislation and all environmental disposal legislation. Failure to comply with the law is a breach of contract. Where such a breach occurs, the Subcontractor shall indemnify Cleartech against any direct, indirect or consequential loss, damage or costs arising as a result of the Subcontractor's breach. Consequential loss includes but is not limited to any loss incurred to ongoing operations of Cleartech, losses arising or likely to arise, under the Main Contract, or other costs whatsoever.
- 3.6 The Subcontractor shall provide all Health & Safety files and provide all necessary details for operating and maintenance manuals required under the Main Contract within five days of completion of the Subcontract Works or at Practical Completion of the Main Contract works, whichever is the earlier. Failure to supply this information, within the time limit stipulated, will result in withholding of any payments due.
- 3.7 Any notice of any kind to be given by the Sub-contractor under this Sub-Contract Agreement shall be issued by first registered post to the Contractor's head office address. The notice shall be deemed as served 2 working days after the notice is posted. Notices issued by any other means shall be invalid.
- 3.8 The Subcontractor shall provide competent and qualified personnel to supervise and carry out the Subcontract Works and all related operations. These personnel will at all times be

- able to take, receive and understand instructions in English. Further, supervision includes competence to:
- a) identify risks to health and/or safety;
 - b) ensure safe methods of work are adopted;
 - c) Fulfil the Subcontractor's obligations within any Site Operational Rules to identify maintenance needs, defects, preventative measures and the like.
- 3.9 The Subcontractor shall immediately and in any event no later than 12 hours notify in writing Cleartech of anything patently defective or substandard in or around the Subcontractor's Works which should be reasonably obvious to a competent Subcontractor.
- 3.10 The Subcontractor shall be responsible for the accurate setting out of the Subcontract Works.
- 3.11 Where any part of the Subcontract Works is to be applied to work carried out by others or may be affected by atmospheric conditions the Subcontractor is to satisfy itself that the work carried out by others, and that the atmospheric conditions are such that the Subcontract Works will not be adversely affected. If the Subcontractor is not satisfied, he is to notify Cleartech in writing immediately to that effect stating his reasons before proceeding with the Works.
- 3.12 Upon completion of the Subcontract Works, the Subcontractor shall notify Cleartech in writing that it considers the Subcontract Works to be complete. If such notice is not dissented from within 14 days, the date notified by the Subcontractor shall be the date of completion and commencement of the defects liability period. Otherwise, Cleartech may advise the Subcontractor of the date Cleartech considers completion to have occurred. If neither of the foregoing occurs prior, the date of any payment notice showing first release of retention shall be construed as the date for completion of the Subcontract Works.
- 4 Control of Personnel**
- 4.1 Cleartech and Cleartech's Employer may instruct the immediate removal from site of any person employed by the Subcontractor who in the absolute discretion of Cleartech and/or Cleartech's Employer is unsuitable. The Subcontractor shall comply with such request immediately, failing which, any payment due under the contract shall be suspended by the period as the Sub-contractor takes to remove the person from site from when he was notified to do so.
- 4.2 The Subcontractor will ensure that any Site Operational Rules are complied with by its personnel and other persons brought to site by the Subcontractor. The Subcontractor shall remove from the works any employee who fails to comply.
- 5. Copyright**
- 5.1 The copyright and all other intellectual property rights in all work prepared or compiled by the Subcontractor in the performance of this Subcontract remain vested in the Subcontractor. The Subcontractor hereby grants a royalty free, non-exclusive, irrevocable licence to copy and use and reproduce any such materials for any purpose related to the Subcontractors Works or pursuant to the Main Contract.
- 6. Instructions and Variations**
- 6.1 The Subcontract Works shall not be varied without the express, written instruction of Cleartech.
- 6.2 The Subcontractor shall comply forthwith with all Cleartech instructions, including verbal instructions. The Subcontractor shall within 3 days of instruction give notice in writing to confirm those instructions in writing to Cleartech. If such confirmation is not dissented from within 14 days these are deemed to be written instructions as though given by Cleartech.
- 6.3 Cleartech shall not be liable for payment of any additional sums to the Subcontractor which are not pursuant to written instructions.
- 6.4 Cleartech may at their sole discretion omit all or part of the works from the Subcontract Works upon notice and have such works completed by any other subcontractor as it may determine. Cleartech shall not be liable for any costs or losses of the Subcontractor howsoever arising from the omission of works, whether such works are completed by others or not.

6.5 The Subcontractor shall accommodate any programme changes at its cost. Any variations under the Subcontract which may have a time implication shall be considered under Clause 3.4.

7. Valuation of Variations

7.1 Note that agreement on price shall not in any way relieve the Subcontractor's obligation at 6.2 to comply with the instruction forthwith. For the avoidance of doubt the Subcontractor must comply immediately on receipt of Cleartech's instructions, even if there is no prior agreement on price.

7.2 Where the Subcontractor is instructed to vary the Subcontract Works, the Subcontractor will provide a quotation for the variation within 5 days of receipt of the instruction. The quotation will be reasonable and in accordance with the pricing mechanism set out below.

7.3 Cleartech may:

- (a) accept the quotation in writing; or
- (b) indicate that Cleartech will value the variation in accordance with Condition 7.4; or
- (c) Withdraw the instruction if the appropriate time for implementation has not started.

7.4 If Cleartech indicates that it will value the variation, Cleartech will fix the proper value based on the rates and prices contained in the quotation, or at a fair value.

7.5 The quotation or Cleartech value for the variation will be paid in accordance with the Subcontract.

7.6 No work is to be carried out on dayworks or on a time and material basis without the prior written instruction of Cleartech to carry out these works as dayworks. All daywork sheets should be presented for approval by Cleartech's authorised representative at the end of each working day and submitted with each payment application. Daywork sheets must include, at a minimum, operatives names, details of any plant or materials, a brief description of the work, location and durations of work undertaken.

8. Payment

8.1 Interim payment terms and conditions may be subject to an agreed Schedule of Payments appended to the Subcontract at Appendix II. Any agreed Schedule of Payments will take precedence over the provisions of this Clause 8 in relation to interim applications and payments only. The payment terms and periods of this Subcontract apply, and the Subcontractor shall not rely upon any payment terms of the Main Contract in default or otherwise.

8.2 Retention will be withheld from payments due as set out in the Sub Contract, if no rate is stipulated in the Subcontract Order the rate of retention shall be 5%.

8.3 The first moiety of retention shall become due 3 months after completion of the Subcontractor's works under the Subcontract or in default of such, 3 months after the date for completion of the Main Contract works, or such extended date. The second moiety release shall become due upon the later of 24 months following the date of payment of the first moiety being made by Cleartech or the date upon which all defects notified within the defects liability period have been remedied to the satisfaction of Cleartech. The Subcontractor shall make application for any release of retention within 7 days following the relevant retention moiety due date. The final date for payment of any moiety release of retention shall be 30 days following the relevant due date.

8.4 Until a period of 31 days following the date for completion of the Subcontract Works (or any properly sanctioned extended date), the Subcontractor may submit an interim application for payment, no later than 5 days before Cleartech's Valuation Date, as defined in the Subcontract Order. If no valuation date is stated in the Subcontract Order then Subcontractor's interim valuations are to be submitted no later than 7 days before the end of each calendar month. The valuation shall state the sum the Subcontractor considers to be due at Cleartech's Valuation Date, or the end of the relevant calendar month, and set out the basis on which that sum is calculated.

8.5 It shall be a condition precedent for the release of any payment from Cleartech that the Subcontractor presents a valid application for payment in sufficient detail to enable it to be checked against the actual Subcontract Works executed and which fully demonstrates the amount due. Variations claimed within any application shall be fully vouched, including

- copies of written instructions and all documentation to properly substantiate any sums claimed, which shall accompany each application in which a claim for such is included. Applications not containing such detail shall be invalid.
- 8.6 Interim applications shall become due for payment on the last day of the month following the month in which a valid application is received by Cleartech. The final payment date for interim applications shall be 30 days following the relevant due date.
- 8.7 Not later than five days following the due date for payment, Cleartech may issue a payment notice in respect of any valid application for payment by the Subcontractor, setting out the sums due to the Subcontractor and the basis of calculation. Not later than 1 day before the Final Date for Payment for any payment due under the Subcontract, Cleartech may issue a pay less notice specifying the amount Cleartech considers to be due and the basis on which that sum is calculated, with reasons for paying less than any earlier and effective notified sum.
- 8.8 Cleartech will pay any amount due under the Subcontract on or before the final payment date. If Cleartech fails to pay the amount, or any part thereof due to the Subcontractor by the final date for payment, simple interest will be payable on such amounts at a rate of 3% over the Bank of England Base Rate which is current at the date the payment became overdue. The parties agree that this is a substantial remedy and adequate compensation.
- 8.9 Cleartech shall be entitled to deduct from or set off against any monies otherwise due to the Subcontractor any sum or sums which the Subcontractor is liable to pay to Cleartech whether for damages or otherwise and whether under this Subcontract or otherwise.
- 8.10 The Subcontractor shall present a final application for the Subcontract Works within four weeks of completion of the Subcontract Works. Any later application, unless specifically permitted in writing by Cleartech, shall not be valid. The Subcontractor's final application submission shall contain all detailed particulars necessary to substantiate the sums claimed therein, together with all supporting documents which the Subcontractor may rely upon to demonstrate entitlement.
- 8.11 In the absence of a valid final application from the Subcontractor, Cleartech will thereafter (and no later than 1 day before the due date for payment) issue its own final account statement to the Subcontractor, setting out all sums payable to (or by) the Subcontractor under the Subcontract. The final account shall become due for payment upon the later of the date of expiry of the defects liability period or the date upon which the Subcontractor completes all prior notified defects to the satisfaction of Cleartech.
- 8.12 Any amount payable to Cleartech in any interim or final payment shall become due upon submission by Cleartech of the payment notice, pay less notice or final account notifying the Subcontractor of such a balance, with a final payment date of 30 days thereafter.
- 8.13 Subject only to adjustment as a consequence of the operation of Clauses 10 and 15, any amount assessed as being due to the Subcontractor in the final account statement shall be conclusive and binding as to any final amount payable to the Subcontractor in relation to the Subcontract (and otherwise at Law) unless referred to dispute resolution within 28 days of Cleartech issuing the final account statement.
- 8.14 The Subcontractor shall present an invoice corresponding to any notified sum not later than 10 days after the due date for any notified sum. If the Subcontractor is late in submitting any invoice, the final date for payment under this Clause 8 or as contained with any schedule shall be extended by the same number of days as the Subcontractor is delayed in issuing the invoice. Invoices shall be submitted by post and email to invoices@Cleartech.org.uk
- 8.15 In the event that Cleartech issues any pay less notice after the Subcontractor's invoice has been issued, the Subcontractor shall within 7 days of such notice issue a credit note amending the balance payable to the sum set within the pay less notice.
- 9. Attendances**
- 9.1 Cleartech will provide to the Subcontractor the attendances as set out in Appendix III. Cleartech do not warrant the provision of any other attendances. The Subcontractor shall provide all other items required to complete the Subcontract Works.
- 9.2 The Subcontractor shall not adjust or interfere with the attendances provided by Cleartech for its use without express written permission of Cleartech. This includes but is not limited to scaffolding, lifting equipment and other facilities as may be applicable.

The Subcontract includes the delivery to Site, loading, distributing, protection and further movement of any materials required by the Subcontractor unless expressly stated otherwise in the Sub Contract. The Subcontract includes the cost of all necessary facilities for the Subcontractor's labour, materials, tools, plant and equipment delivered to and stored on and moved about Site as required by the Subcontractor. The Subcontractor has satisfied itself as to the extent and limitations of storage, access and loading available on Site.

10. Defects

- 10.1 The Subcontractor shall notify Cleartech in writing of any defective or substandard elements of the Subcontract Works immediately and in any event not more than 24 hours from completion of the Subcontractors Works or the relevant element of the Subcontractors works.
- 10.2 The Subcontractor shall make good any defects in the Subcontract Works, and shall allow to Cleartech any sums consequentially, or likely to be consequentially, lost arising therefrom.
- 10.3 Without relieving the Subcontractor of any responsibility, Cleartech may check any aspect of the Subcontractors Works at any time. The Subcontractor will assist Cleartech in this and will search for any potential defects identified by Cleartech, or the Employer, on Cleartech's instruction.
- 10.4 Where any part of the Subcontract Works is to be applied to work carried out by others or may be affected by atmospheric conditions the Subcontractor is to satisfy itself that the work carried out by others, and/or that the atmospheric conditions are such that the Subcontract Works will not be adversely affected. If he is not satisfied, he is to notify Cleartech in writing to that effect stating his reasons before proceeding with the Subcontract Works.
- 10.5 The Defects Liability Period shall commence from the date of completion of the Main Contract Works and shall only conclude 24 months thereafter unless other such period is stated in the Subcontract Order
- 10.6 In the event of the Subcontractor failing to carry out to Cleartech's satisfaction any part of the Subcontract Works, including remediation of notified defects, Cleartech may have such works completed by a third party and any cost incurred thereby shall be recoverable by Cleartech from the Subcontractor.

11. Assignment

- 11.1 The Subcontractor shall not assign the benefit or in any way transfer or Subcontract or delegate any of its obligations under this Subcontract without the prior written consent of Cleartech.

12. Title

- 12.1 The materials of the Subcontract brought to site by the Subcontractor and intended for incorporation in the Subcontract Works shall, upon delivery, be deemed to be the property of Cleartech and the Subcontractor shall not remove the same or any part thereof without the consent in writing of Cleartech, which consent shall not be unreasonably withheld. This does not affect the Subcontractors obligation to store, protect, place or otherwise use the materials.
- 12.2 Any sum stated as due shall NOT include the value of any materials or goods before their delivery to or adjacent to the Subcontract Works unless the following conditions have been fulfilled:
 - (a) The Subcontractor has provided Cleartech with reasonable proof that:
 - 12.2.a.1. The property is vested in Cleartech;
 - 12.2.a.2. The items are insured against loss or damage for their full value until they are delivered to, or adjacent to, the Subcontract Works;
 - (b) At the premises where the items have been manufactured or assembled or are being stored, there is in relation to those items clear identification of:
 - 12.2.b.1. Cleartech as the person to whose order they are held; and
 - 12.2.b.2. Their destination as the Subcontract Works,And these items either are set apart or have been clearly and visibly marked, individually or in sets, by letters or figures or by reference to a pre-determined code.

- 12.3 The Subcontractor shall permit Cleartech access to examine any materials or goods included within any application for payment.
- 12.4 In the event of termination of the Subcontract for any reasons included herein, the Subcontractor shall allow Cleartech unfettered access to all material and goods included within any application for incorporation into the Works.

13. Waste Disposal

- 13.1 If the Subcontractor and/or its servants or agents and/or anyone employed by it are removing waste from site then it shall be registered as a carrier/broker of controlled waste under the Control of Pollution Act relevant to the place of the Subcontract Works and in place at the time **and** shall dispose of the waste legally. The Subcontractor shall produce evidence of such registration on request. The Subcontractor shall obtain transfer notes for all waste removed from site and shall retain same for a period of 12 months after completion of the Subcontract Works. These shall be made available to Cleartech on request.
- 13.2 The Subcontractor shall clean up and remove any waste materials generated by and/or surplus materials resulting from the Subcontract Works. All costs incurred by Cleartech as a result of non-compliance with the above, including those for consequential loss, shall be set-off under this Subcontract or shall be recoverable from the Subcontractor by Cleartech as a debt.

14. Insurances and Liability

- 14.1 The Subcontractor shall maintain insurances as required by the Subcontract Order and shall produce evidence of this insurance upon request by Cleartech. The Subcontractor shall protect the Subcontract Works and adjacent works, materials and equipment from damage or loss until they are complete. Cleartech does not accept any responsibility for damage, loss or interference with the Subcontract Works and/or plant and equipment.
- 14.2 The Subcontractor shall make good any defects in the Subcontract Works and shall allow to Cleartech any sums consequentially or likely to be consequentially lost arising therefrom.
- 14.3 Where the Subcontractor breaches the Subcontract, it shall indemnify Cleartech against any direct, indirect or consequential loss, damage or costs arising as a result of the Subcontractor breach. Consequential loss includes but is not limited to any loss incurred to ongoing operations of Cleartech, losses arising or likely to arise, under the Main Contract, or other costs whatsoever.
- 14.4 The Subcontractor shall grant a collateral warranty agreement to any third party to whom Cleartech also required to deliver a Subcontractor collateral warranty under the Main Contract in the form contained in the Main Contract or any other reasonable form. Cleartech shall be entitled to withhold any payment due under this Subcontract until such times as all necessary Collateral Warranties are duly executed by the Subcontractor.
- 14.5 Notwithstanding anything stated in the Subcontract Order, the Subcontractor shall maintain adequate Employers and Public Liability Insurance and Professional Indemnity Insurance, where required under the Main Contract, approved by Cleartech and shall produce evidence of this insurance upon request by Cleartech. Any such insurances shall be maintained for a period of 12 years after completion of the Main Contract Works, unless a difference period is stated in the Subcontract Order. The Subcontractor shall at no additional cost execute a third party collateral warranty in the form provided by Cleartech if so requested.
- 14.6 No payment shall become due to the Subcontractor unless Cleartech are provided with copies of all current and valid insurance certificates. Any application for payment submitted in the absence of having provided proof of insurance shall be invalid.
- 14.7 All subcontractors are required to complete Cleartech pre-qualifying Health & Safety questionnaire before carrying out works on site. This includes CIS registration details for payment etc. Failure to provide the necessary details will result in Cleartech withholding any payments that may become due.

15. Termination of Employment

- 15.1 Cleartech may terminate the Contract due to no fault of the Subcontractor at any time during the currency of the Subcontract Works on the giving of 7 days' notice. Cleartech shall be liable for all payments due to the Subcontractor under the terms of the Subcontract up to

the date of termination, such amounts being determined in accordance with the payment terms of this Subcontract and shall become due upon completion of all works and any associated making good defects under the Main Contract. Cleartech shall not be liable under this condition for any consequential loss, loss of profit or other sums.

- 15.2 If the Subcontractor defaults on any aspect of this Subcontract, Cleartech may notify the Subcontractor pursuant to clause 1.2 and this clause to rectify the default within 5 days. If the Subcontractor fails to comply, Cleartech may then terminate the Subcontract forthwith without prejudice to its other rights under this Subcontract.
- 15.3 If the Subcontractor makes a composition or arrangement with its creditors, or becomes bankrupt, or being a company:
- (a) makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act or the Insolvency Act/Order as the case may be or any amendment or re-enactment thereof; or
 - (b) has a provisional liquidator, liquidator, receiver or administrator appointed; or
 - (c) has a winding-up order made; or
 - (d) passes a resolution for voluntary winding-up (except for the purposes of amalgamation or reconstruction); or
 - (e) Any such analogous situation applies.
- The employment of the Subcontractor under this Contract shall be forthwith automatically terminated and may only be reinstated if Cleartech and the Subcontractor (or its representatives as may be) shall so agree in writing.
- 15.4 In the event of the employment of the Subcontractor being terminated under Clause 15.2 or 15.3
- (a) Cleartech may use all temporary buildings, plant, tools, equipment, goods and materials intended for, delivered to and placed on or adjacent to the Subcontract Works, and may purchase all materials and goods necessary for the carrying out and completion of the Subcontract Works and the making good of defects of the kind;
 - (b) the Subcontractor shall if so required by Cleartech within 14 days of the date of termination, assign to Cleartech, without payment, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of the Contract to the extent that the same is assignable;
 - (c) Cleartech may pay any supplier for any materials or goods delivered or works executed for the purposes of the Contract before the termination insofar as the price thereof has not already been discharged by the Subcontractor and deduct the sum from any payment that may be due to the Subcontractor;
 - (d) the Subcontractor shall as and when required by a direction of Cleartech so to do (but not before) remove from the site any temporary buildings, plant, tools, equipment, goods and materials belonging to it and have removed by the owner any temporary buildings, plants, tools, equipment, goods and materials not owned by him. If within a reasonable time after any such requirement has been made the Subcontractor has not complied, then Cleartech may (but without being responsible for any loss or damage) remove and sell any such property of the Subcontractor, holding the proceeds against all costs incurred by Cleartech because of the Subcontractor.
 - (e) Cleartech shall not be bound by any provision of the Subcontract or otherwise to make any further payment to the Subcontractor until all defaults or defects of the Subcontractor have been determined and discharged. Then only such residual sums to arise shall become due and Cleartech will issue a final account statement. Any such post termination payment shall become due 30 days after the issuing of a final account statement, with final payment to follow 30 days thereafter.
- 15.5 If for any reason other than Employer insolvency (Clause 15.6) Cleartech's employment under the Main Contract is terminated before the Subcontractor has fully performed its obligations under this Subcontract, then the employment of the Subcontractor shall be automatically determined and Cleartech may exercise the same rights as are reserved by the Employer under the Main Contract.
- 15.6 If Cleartech's Employer or any paying party in the chain of payments to Cleartech becomes insolvent, then the Sub-contractor's employment under this Sub-contract shall immediately

be determined. No further payments shall be made to the Sub-contractor whether due prior to the insolvency event or otherwise would have become due.

15.7 If the Main Contract is terminated as a result of any breach of the Subcontract by the Subcontractor, Cleartech shall be entitled to any losses and damages incurred as a result of the termination of the Main Contract and any liabilities incurred by Cleartech to other subcontractors which are attributable to such termination of the Main Contract.

15.8 Within 30 days of any such termination the Subcontractor shall submit its valuation (not an application) of all works completed up to the date of termination, including all unfixed materials or goods that shall be incorporated into the Works. Any sums found owing shall not become due until all costs, including costs under the Main Contract are ascertained, which amounts shall be promptly notified to the Subcontractor by Cleartech. If the amount found due is less than any amounts for which Cleartech are liable, Cleartech shall be entitled to recover the balance from the Subcontractor.

16. Waiver

16.1 Nothing arising by any conduct, approval or consent given by or on behalf of Cleartech in connection with the Subcontract Works shall prejudice, modify, affect or otherwise relieve the Subcontractor from any of its obligations under this Subcontract. No waiver or amendment of these conditions by Cleartech's conduct shall be construed as any amendment to the Subcontract, and Cleartech may enforce any agreed term at any time under the Subcontract.

17. Dispute Resolution

17.1 Any dispute or difference arising pursuant to these works shall initially be referred to adjudication in accordance with the Scheme for Construction Contracts applicable to the relevant territorial area of the Subcontract Works Location. If no Scheme for Construction Contracts is applicable to the relevant territorial area of the Works location the Scheme for Construction Contracts for Scotland applicable at the date of the Subcontract shall apply. The Adjudicator Nominating Body shall be the Chartered Institute of Arbitrators Scottish Branch. The adjudicator's decision shall become final and binding unless further determination proceedings are notified and initiated within 28 days of the adjudicator's decision.

17.2 If either party is dissatisfied with the adjudicator's decision, then it shall within 28 days of the adjudicator's decision refer the dispute to arbitration in accordance with the Arbitration (Scotland) Act 2010 and the arbitrator shall be agreed between the Parties or otherwise appointed by the of the Chartered Institute of Arbitrators Scottish Branch. The seat of the arbitration shall be Edinburgh. If the dispute is not so referred within this period, then the adjudicator's decision shall be final and binding.

17.3 The law of the Subcontract shall be that of Scotland, unless otherwise stated on the Subcontract Order.

18. Entirety Clause

18.1 The parties freely agree and accept that the terms and provisions of this agreement comprises the entire agreement between the parties and that the values ascertained under this agreement will and do represent the entire extent of and fully describe and quantify the liabilities owned or as may fall due to either party under the contract or at law.

Standard Terms and Conditions of Subcontract Cleartech Group Ltd

Executed as a Deed this _____ day of _____ 2018

For Cleartech Group Ltd.

For the Subcontractor

Signed: _____

Signed: _____

Name: _____

Name: _____

In the Capacity of Director

In the Capacity of Director/Secretary/Principal

Witnessed By:

Signed: _____

Signed: _____

Name: _____

Name: _____

Cleartech Group Ltd Registered in Scotland No. SC264196

APPENDIX I - SUBCONTRACT SCOPE

Write a brief description of the works here

The Subcontractor shall carry out and complete the Subcontract Works in accordance with the following Subcontract Documents;

1. The Subcontractor Order
2. These Cleartech Group Ltd. Standard Terms & Conditions of Subcontract (Incl. Appendices hereto)
3. [Specification]
4. [Drawings as listed]
5. [Record of Meeting]

The Subcontractor shall provide all necessary certificates, as-built drawings, manuals, warranties and the like prior to completion of the Subcontract Works.

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APPENDIX III - SCHEDULE OF ATTENDANCES

No	Description	Sub-contractor	Contractor	Main/Principal Contractor
1	Site welfare facilities			X
2	Shared use of office	X	X	
3	Cost of communications/faxes etc.	X		
4	Unloading and distribution of material	X		
5	Security of the site			X
6	Safe storage of material	X		
7	Protection of unfixed material	X		
8	Protection of the installed works	X		
9	Cleaning waste materials arising from works	X		
10	Provision of skips for disposal of waste	X		
11	Disposal of Asbestos			X
12	Disposal of other contaminated/specialist	X		
13	Attending progress meetings	X	X	
14	Coordination of the Sub-contract works with	X		
15	Obtaining all necessary permits	X	X	
16	Submit O&M Documents in the approved	X		
17	Submit As-built drawings in approved format	X		
18	Submit design information in approved format	X		
19	Site access permits	X	X	
20	Attending tool-box talks	X	X	
21	Attending site inductions	X	X	
22	110v Power supply			X
23	Extensions do.	X		
24	Builderswork - holes up to 40mm diameter	X		
25	Effluent Waste			
26				
27				
28				
29				
30				

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Standard Terms and Conditions of Subcontract Cleartech Group Ltd



APPENDIX IV - PRICING SCHEDULE

Insert Subs BQ or price breakdown here

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1. Definitions and Interpretation

- 1.0 "Charges" means the charges payable by the Company for the Goods and/or Services as set out In the Order.
- 1.1 "Contract" means the contract for provision of goods and/or services by the Supplier to the Company as comprised by these Conditions, the Purchase Order and (if any) the Specification.
- 1.2 "Company" means Cleartech Group Ltd (Company No SC264196) and whose registered office is 17 Langlands Avenue, Kelvin South Business Park, East Kilbride, G75 0YG.
- 1.3 "Conditions" means the conditions set out in this document as may be expressly amended by the Purchase Order.
- 1.4 "Confidential Information" means all information of a confidential nature disclosed (whether verbally or in writing) by the Company and/or any Cleartech Group Ltd company to the Supplier before or after the date of this Contract, including any Information relating to the Company's and/or any Cleartech Group Ltd Company's customers, personnel, suppliers, products, operations, methodologies, processes, developments, know-how and business affairs;
- 1.5 "Deliverables" means any and all reports, data. presentations, documents, deliverables, software, materials and all other Items (in whatever format) provided by or on behalf of the Supplier to the Company as part of or in connection with the Services, including (without limitation) those deliverables specified in the Purchase Order and/or the Specification.
- 1.6 "Delivery" means the actual delivery, unloading and (where specified in the Purchase Order) the installation of the Goods and/or the provision of the Services, by or on behalf of the Supplier and in accordance with this Contract.
- 1.7 "Delivery Date" means the date (or dates) specified in the Purchase Order for the delivery of all or part of the Goods and/or Services.
- 1.8 "Delivery Address" means the premises/Address at or to which the Company requires the relevant Goods and/or Services to be delivered. as set out in the Purchase Order or as otherwise instructed by the Company in writing prior to Delivery
- 1.9 "Force Majeure" means any cause affecting the performance by a party of its obligations arising from acts, events, omissions. happenings or non-happenings beyond its reasonable control, but excluding any foreseeable adverse weather, any industrial dispute relating to the Supplier or the Supplier's sub-contractors and/or agents and/or any other failure In the Supplier's own supply chain.
- 1.10 "Good Industry Practice" means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading business within the relevant Industry or business sector;
- 1.11 "Intellectual Property Rights" means any copyright, patent, trade mark or trade name, design rights, database rights, know-how or other similar right of whatever nature, registered or unregistered, present or future, (together with any application for any of the foregoing and any renewals or extensions thereof, whether existing or future and whether existing or conferred under the laws of the United Kingdom or anywhere else In the world;
- 1.12 "Goods" means all or any part of the goods (If any) set out in the Purchase Order.
- 1.13 "Order" means the official purchase order issued by the Company to the Supplier for the Delivery of the Goods and/or services;
- 1.14 "Cleartech Group Ltd" means the Company, any subsidiary or holding company from time to time of the Company and any subsidiary from time to time of a holding company of that company, the terms "holding company" and "subsidiary" being as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee and any other entity which directly or indirectly controls; is controlled by, or is under direct or common control with the

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Company from time to time (the term "control" for the purpose of this definition meaning that a person possesses, directly or indirectly the power to direct or cause the direction of the management and/or policies of the other person (whether through the ownership of voting shares, by contract or otherwise).

- 1.15 "Services" means the services (if any) to be provided by the Supplier to the Company as described in the Purchase Order and/or the Specification, which shall include the provision of any Deliverables.
- 1.16 "Specification" means the description, drawings, data, and information or samples (if any) of the Goods and/or Services set out or incorporated by reference in the Purchase Order.
- 1.17 "Supplier" means the person, firm or company with whom the Company contracts and as set out in the Purchase Order and shall be deemed to include its employees, agents and sub-contractors (if any).

2. Basis of Contract

- 2.0 The terms of this Contract shall only be superseded by the terms of any subsequent contract in relation to the same subject matter that is signed by authorised representatives of both parties.

3. Delivery of Services

- 3.0 The Supplier shall Deliver the Services to the Company In accordance with the terms of this Contract and without limitation the Supplier shall:
 - 3.0.1 co-operate with the Company In all matters relating to the Services, and comply with all Instructions of the Company Including any Instructions by the Company to provide all or part of the Services to any Scottish Power Group Company's authorised contractors, consultants and/or agents; and
 - 3.0.2 Provide all equipment. Plant, tools and vehicles and such other Items as are required to Deliver the services and maintain appropriate Insurance coverage in relation to such Items.
- 3.1 Without prejudice to condition 6, the Supplier shall meet any performance dates for the Services specified In the Order or notified to the Supplier by the Company.

4. Delivery of Goods

- 4.0 The Supplier shall Deliver the Goods to the Company In accordance with the terms of this
- 4.1 The Supplier shall ensure that:
 - 4.1.1 the Goods are properly packed and secured in such manner as to ensure that they reach their destination in good condition and in compliance with the warranties and undertakings under this Contract;
 - 4.1.2 The Goods are suitably and sufficiently marked, endorsed and labelled with information and advice necessary to instruct and warn any persons into whose hands the Goods may come about any hazards to health and/or safety that are reasonably foreseeable as arising from despatching, handling, using or possessing the Goods and also about the necessary precautions to be taken In relation to the Goods. If It Is not reasonably practicable to label the Goods in accordance with this condition 4.2.2, the relevant information and advice must be provided by the Supplier by means of a written notice which accompanies the Goods
 - 4.1.3 without prejudice to conditions 4.2.2 and 4.2.4, the Goods are clearly marked with (i) the Supplier's name and address, (ii) the Purchase Order number noted in the Purchase Order and (iii) the Delivery Address
 - 4.1.4 each Delivery of the Goods is accompanied by a delivery note sent to the Delivery Address (and/or such other address as the Company may specify from time to time) which shows the date of the order, the Order number, the type and quantity of the Goods (including the code number of the Goods (where applicable), special storage Instructions (If any) and if the Goods are being Delivered in instalments, the outstanding balance of Goods remaining to be Delivered.

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- 4.2 The Company accepts no liability for pallets, containers, cases, drums or any other form of packing material used by the Supplier in Delivering the Goods
- 4.3 The Supplier shall deliver the Goods (i) on the Delivery Date noted in the Purchase Order; (ii) to the Delivery Address noted in the Purchase Order and (iii) during the Company's normal hours of business; or as otherwise instructed by the Company in writing.
- 4.4 The Supplier shall not deliver the Goods in instalments without the Company's prior written consent and Conditions 4, 5 and 6 shall apply equally in relation to any delivery instalments of the Goods.
- 4.5 Title in the Goods shall pass to the Company upon the earlier of (i) the Goods being unloaded at the Delivery Address or (ii) payment by the Company of the Charges for the Goods. Risk in the Goods shall pass to the Company on signature of a delivery acknowledgement by the Company. The Supplier warrants and undertakes that immediately prior to title in the relevant Goods passing to the Company in accordance with this condition 4.6, all Goods are the absolute and unencumbered property of the Supplier and are not subject to any liens, charges and/or other third party rights of any nature.
- 4.6 The Supplier acknowledges and agrees that notwithstanding the Company signing a delivery acknowledgement or conducting any inspection or testing of the relevant Goods prior to or following Delivery; the Supplier shall remain fully responsible for the Goods and any such signature, inspection or testing shall not reduce or otherwise affect the Supplier's obligations or the Company's rights under and/or pursuant to the Contract.
- 4.7 The Supplier shall indemnify the Company of all costs incurred by the Company as a consequence of a failure to meet the delivery date or date(s) stipulated on the Purchase Order. Any costs so incurred by the Company shall be recoverable from the Supplier as a debt.

5. Quality

- 5.0 The Supplier hereby warrants and undertakes to the Company that:
 - 5.0.1 It has the right, power, capacity, skills, experience and authority to enter into this Contract and to Deliver the Goods and the services;
 - 5.0.2 It shall Deliver the Goods and Services in accordance with good industry practice and In compliance with all laws, directions, codes or regulations relevant to the Delivery of the Goods and the Services;
 - 5.0.3 It shall use personnel who are suitably skilled and experienced to perform any tasks assigned to them and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - 5.0.4 All Goods, Services and Deliverables shall conform with all descriptions and specifications set out in the Purchase Order and/or the Specification, and the Goods, Services and Deliverables are of satisfactory quality and shall be fit for purpose expressly or impliedly made known to the Supplier by the Company;
 - 5.0.5 It shall Deliver the Goods and the Services in a timely and professional manner and in any event in accordance with the Delivery Dates and any other specific timescales set out in the Purchase Order and/or the Specification or as otherwise notified by the Company in writing to the Supplier from time to time;
 - 5.0.6 It shall (having regard to the terms of the Specification) use the best available quality goods, materials, standards and techniques, and ensure that the Goods and Deliverables and all goods and materials supplied and used in the Services, or transferred to the Company shall be free from defects in workmanship, installation and design;
 - 5.0.7 It shall hold all materials, equipment and tools , drawings, specifications, information and data supplied by the Company to the Supplier ("Company Materials") in safe custody, at Its own risk; maintain the Company Materials in good condition until returned to the Company; maintain adequate insurance cover in relation to the Company Materials while in the Supplier's possession

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and not dispose of, or use the Company Materials other than in accordance with the Company's written Instructions or authorisation;

- 5.0.8 The use by the Company of the Goods, the Deliverables and/or any other items provided by or on behalf of the Supplier, or are otherwise used by the Supplier in connection with the provision of the services under and/or pursuant to this Contract, shall not infringe the Intellectual Property Rights of any third party;
- 5.0.9 It shall not do or omit to do anything which may cause the Company to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business and the Supplier acknowledges that the Company may act or rely on the Services;
- 5.0.10 It has and shall continue to have all licences, permissions, authorisations, consents and permits required to perform its obligations under the Contract;
- 5.0.11 It shall implement and observe sound environmental practices and procedures In connection with the Delivery of the Goods and/or services;
- 5.0.12 It shall observe fair employment practices and policies in relation to any staff that are engaged In the Delivery of the Goods and/or Services;
- 5.0.13 The Supplier (and all staff engaged in the Delivery of the Goods and/or Services) shall comply with all rules, policies and procedures (including, without limitation, health and safety practices and anti-corruption practices) notified to the Supplier in connection with the Delivery of the Goods and/or Services; and
- 5.0.14 It shall operate a quality management system which meets the requirements of an appropriate national and/or international standard and the specific standards (if any) set out in the Specification and shall ensure that the Delivery of all the Goods and/or Services is managed and controlled within the operational requirements of such system.
- 5.1 The Supplier shall afford the Company or its duly authorised representatives such access to the Supplier's premises as may be reasonably necessary to enable the Company to satisfy itself that the Supplier is complying with its obligations pursuant to this Contract and with the quality standards required under this condition 5.

6. Company's Remedies

- 6.1. If the Supplier falls to deliver the Goods and/or Services by the Delivery Date, the Company shall, without limiting its other rights or remedies, be entitled to exercise one or more of the following rights:
- 6.1.1. To terminate the Contract with Immediate effect by giving written notice to the Supplier;
- 6.1.2. To refuse to accept any subsequent Delivery of the Goods and/or Services which the Supplier attempts to make;
- 6.1.3. where the Company has paid any sums in advance for Goods and/or Services that have not been Delivered by the Supplier in accordance with this Contract to require the Supplier to refund such sums; and/or
- 6.1.4. require the Supplier to reimburse the Company for any additional costs, loss or expenses incurred by the Company the Supplier and expenses incurred by the Company which are In any way attributable to the Supplier's failure to Deliver the Goods and/or Services in accordance with this Contract, including any additional costs of obtaining replacement Goods and/or Services
- 6.2. If the Supplier has Delivered Goods and/or Services that do not comply with the undertakings and/or warranties set out in this Contract then, without limiting its other rights or remedies, the Company shall be entitled to exercise one or more of the following rights (whether or not It has accepted the Goods and/or Services):
- 6.2.1. to reject any Goods (in whole or in part) whether or not title has passed to the Company and to return them to the Supplier at the Supplier's own risk and expenses;

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- 6.2.2. To require the Supplier to repair or replace any rejected Goods and/or re-perform the relevant Services; and/or
- 6.2.3. To exercise any or all of the rights set out in conditions 6.1.1 to 6.1.4.
- 6.3. These Conditions shall also apply to any substituted or remedial Services and/or repaired, or replacement Goods supplied by the Supplier.
- 6.4 The Company's rights and remedies under this condition 6 are in addition to its rights and remedies under the remainder of this Contract and any rights and remedies that are implied by Statute or Common Law.

7. Charges and Payment

- 7.1. The Charges payable by the Company for any Goods shall be the price set out in the Purchase Order, which shall be subject to condition 7.5 and be inclusive of all taxes, customs, duties and other public dues and the costs of package, supply, insurance, carriage, delivery and installation of the Goods, unless otherwise agreed in writing by the Company.
- 7.2. The Charges payable by the Company for any Services shall be the price set out in the Purchase Order which shall be the full and exclusive consideration for the Delivery of the Services. Unless otherwise agreed in writing by the Company, the charges shall include every cost and expense that the Supplier may directly or indirectly incur in connection with the Delivery of the Services, including all travel and subsistence costs, royalties, licence fees and other expenses.
- 7.3. Unless otherwise stated in the Order, the Supplier shall be entitled to Invoice the Company (i) in respect of Goods, on or at any time after signature of an acknowledgement of Delivery of the relevant Goods by the Company and (ii) in respect of Services, on completion of the Delivery of the Services to the Company's satisfaction. Each Invoice must be rendered on or before the last business day of the month in which the goods are delivered or the services performed. The invoice shall be due for payment (the Due date) on the 28th day of the month following the invoice. The final date for payment shall be no later than 14 days after the date upon which the invoice becomes due. Late issue/receipt of invoice from the Supplier shall result in the invoice falling due in the following payment cycle.
- 7.4. In order to be valid, any Invoice to be rendered by the Supplier shall reference the Purchase Order.
- 7.5. All amounts payable by the Company under the Contract are exclusive of amounts in respect of Value Added Tax chargeable from time to time ("VAT") which shall be payable by the Company in addition to the Charges at the prevailing rate, subject to receipt by the Company of a valid VAT Invoice.
- 7.6. If the Company falls to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge Interest on the overdue amount at the rate of two (2) per cent per annum above the base rate (during any applicable period) of the Bank of England, accruing on a daily basis from the due date until the date of actual payment. The Parties agree that this is the sole and substantial remedy for late payment. This condition 7.6 shall not apply to any Charges or payments that the Company withholds or disputes in good faith.
- 7.7. The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in Delivering the Goods and the Services and the Supplier shall allow such records at any time on the Company's reasonable request.
- 7.8. The Supplier shall not be entitled to assert any credit set-off or counterclaim against the Company in order to justify withholding payment of any amount due by the Supplier to the Company. The Company may without limiting its other rights or remedies; set off any amount owing to it by the Supplier against any amount payable by the Company to the Supplier.
- 7.9 No increase in the Charges may be made (whether on account of increased material, labour, or transport cost; indexation, fluctuation in rates of exchange or otherwise, without the prior written consent of the Company. No amount in addition to the Charges shall be payable by the Company unless agreed in writing and either (i) signed by an authorised representative of the Company or (ii) confirmed by the issue by the Company of an amendment to the Order.

8. Intellectual Property

- 8.1. Except to the extent expressly agreed to the contrary in the Purchase Order and/or the Specification, the Supplier hereby assigns to the Company (or shall procure the assignation or assignment to the Company) with the full Title Guarantee and free from all third party rights, all Intellectual Property Rights and all other rights in and to the Deliverables. The assignation or assignment affected by this

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- condition 8.1 shall take effect from the date of this Contract or as a present assignation or assignment of future rights that shall take effect immediately on the coming into existence of the relevant Intellectual Property Rights, or other rights.
- 8.2. The Supplier shall, promptly at the Company's request do (or procure to be done all such further acts and things and the execution of all such other documents as the Company may from time to time require for the purposes of securing for the Company the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Company in accordance with this condition 8.1.
- 8.3 Without prejudice to condition 8.1. the Supplier hereby grants to the Company, a perpetual, irrevocable, royalty-free, transferable (including the right to grant sub-licences to their respective agents and contractors) licence to use any (i) proprietary, pre-existing software that (a) is described in the Order and/ or the Specification and/ or (b) Is otherwise provided to the Company by or on behalf of the Supplier and (ii) background Intellectual Property Rights owned by the Supplier or any third party that are required in order for the Company to make use of any Goods and/or Deliverables.
- 8.4 The Supplier shall not acquire pursuant to this Contract or otherwise, any right, title or interest in or to the Intellectual Property Rights of the Company, including the Company Materials referred to in condition 5.1.7.

9 Confidentiality

- 9.1 The Supplier shall trust and shall ensure that its employees, sub-contractors and agents shall treat as secret and confidential, all Confidential Information. The Supplier shall not at any time, for any reason, disclose or permit access to such Confidential Information to any third party except to its employees and permitted sub-contractors and agents, to the extent required to supply the Goods and/or Services to the Company under this Contract. The Supplier shall ensure that its employees, permitted sub-contractors and agents comply with the terms of this condition 9 and the Supplier shall be fully responsible and liable to the Company in connection with the breach of this condition 9 by any such persons.
- 9.2 Condition 9.1 shall not prevent the disclosure by the Supplier of Confidential Information which the Supplier can demonstrate (to the reasonable satisfaction of the Company).
- 9.2.1 Is in or enters into the public domain otherwise than by breach of this Contract.
- 9.2.2 The Supplier receives from an independent third party having the right to disclose the same.
- 9.2.3 Was in its possession by being recorded in its files or records prior to the date of receipt from the third party; or
- 9.2.4 is require by law to disclose to any court or other competent authority, provided that the Supplier shall use all reasonable endeavours to provide prior notice of the same so that the Company shall have the opportunity to make any submissions to the Supplier and/or the relevant court or other competent authority and/or otherwise exercise its rights to prevent or constrain such disclosure.

10. Insurance and Indemnity

- 10.1 The Supplier shall maintain in force during the period of this Contract and for twelve (12) months after the Termination or expiry of this Contract, adequate Insurance Cover (having regard to the nature and extent of its obligations under this Contract and any compulsory statutory requirements) with reputable insurers, including Public Liability Insurance cover of £10,000,000 per event or series of connected events and any other Insurances expressly required by the Company as set out in the Purchase Order and/or Specification. The Supplier shall provide the Company, at any time on request, evidence of the Insurances in place, pursuant to this condition 9.
- 10.2 The Supplier shall indemnify and keep the Company fully and effectively indemnified against all losses, liabilities, damages, injury, costs, charges, claims and expenses arising from, or incurred by the Company and any its respective employees, agents, sub-contractors and/or customers to the extent that such losses, liabilities, damages, injury, costs, charges, claims and expenses was caused by, relates to or arises from
- 10.2.1 any injury (including death) to, or of any persons or loss of, or damage to, any property which arises out of the negligence, breach of contract or other act, omission or default of the Supplier (including the Supplier's employees, permitted sub-contractors and/or agents) and/or

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- any injury (including death) to, or of any persons, or loss of, or damage to, any property, including injury, loss or damages which arises from an event in respect of which the Supplier is required to maintain Insurance pursuant to this Contract; and/or
- 10.2.2 Any claim that any Goods, Deliverables and/or Services infringe the Intellectual Property Rights of any Third Parties; and/or
- 10.2.3 Any other direct or indirect breach or negligent performance, or failure, or delay in the Supplier's performance of the Supplier's obligations under and/or pursuant to this Contract.
- 10.2.4 In the event that the Company provides its prior written consent to any proposed sub-contracting by the Supplier in accordance with condition 14.5, the Supplier acknowledges and agrees that such consent shall not relieve the Supplier from any of its obligations under and/or pursuant to this Contract and the Supplier shall remain responsible for all acts and omissions of its permitted sub-contractors and all of its officers, staff, agents personnel and contractors, whose acts and omissions shall be deemed to be acts and omissions of the Supplier.

11. Termination

- 11.1 Without prejudice to conditions 11.2 and 11.3 the Company is entitled to terminate this Contract without liability to the Supplier at any time on providing not less than seven (7) days' prior written notice to the supplier.
- 11.2 Either party may terminate this Contract immediately upon giving written notice to the other if the other party becomes insolvent or has a receiver/administrative receiver or administrator appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding up otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction, or a court of competent jurisdiction shall make an order to that effect, or if any party shall enter into any voluntary arrangement with its creditors, or shall become subject to an administration order, or shall cease to carry on business.
- 11.3 With or without prejudice to conditions 11.1 and 11.2, the Company may terminate this Contract immediately upon giving written notice to the Supplier in the event that;
- 11.3.1 the Supplier commits a material breach of any of the terms of this Contract, provided that if the breach is capable of being remedied, the Supplier has failed to remedy the breach within seven (7) days after the receipt of a written request from the Company to do so;
- 11.3.2 the Supplier ceases or threatens to cease to carry on with all or any part of its business;
- 11.3.3 the Supplier disposes of, or threatens to dispose of all or any part of his business;
- 11.3.4 the Company, acting reasonably considers that any conduct, act, omission or default of the Supplier (or any of his employees, permitted sub-contractors and/or agents) is prejudicial to the commercial interests and/or reputation of the Company.

12. Consequences of Expiry or Termination

- 12.1 Following expiry or termination of this Contract for any reason the Supplier shall on request by the Company return or supply to the other all documents, data and other material in its possession containing any Confidential Information.
- 12.2 Expiry or termination of this Contract for whatever reason shall not affect the accrued rights of the parties arising out of this Contract as at the date of expiry or termination and in particular the right to recover damages from the other, nor shall expiry or termination affect the continuance in force of any provision contained within this Contract which is expressly or by implication intended to continue in force on or after such expiry or termination including (but not limited to) conditions 2, 4.3, 4.6, 4.7, 5, 6, 8, 9, 10, 12 and 14, which shall survive termination and/or expiry of this Contract and shall remain in full force and effect.
- 12.3 The parties do not intend that expiry or termination of this Contract shall give rise to any transfer of undertakings pursuant to the Transfer of Undertakings (Protection of Employment Regulations 2006) ("TUPE"). In the event that any person employed or engaged by the Supplier (or the Supplier's permitted sub-contractors and/or agents) claims that his or her contract of employment has transferred to the Company (or any replacement Supplier) pursuant to TUPE, on Termination or expiry of this Contract; the Supplier shall indemnify and keep the Company fully indemnified on demand against any claims, actions, demands or proceedings brought against the Company, or any replacement supplier by any such persons and any losses, liabilities, damages, costs, charges and expenses suffered or incurred by the Company or any replacement supplier in connection with the

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employment and/or termination of the employment of such persons, whether arising before, on or after the termination or expiry of this Contract.

13. Supplier Corporate Social Responsibility

- 13.1. The Supplier must ensure that the following measures are followed within its organisation in the performance of its obligations under this Contract:
- 13.1.1. promote good practices, which foster and promote respect for human rights;
 - 13.1.2. avoid complicity (in any form) in human rights abuses;
 - 13.1.3. Respect the freedom to join unions or the right of workers to engage in collective bargaining, subject to the existing legal requirements under the law governing this Contract;
 - 13.1.4. Eliminate all types or sorts of forced and compulsory labour, understood to be all types of work or service demanded from an individual under the threat of any sort of punishment. Work should be obtained from the individual freely and voluntarily;
 - 13.1.5. avoid any type of child labour in its organisation, respecting minimum contracting ages in accordance with applicable and in force legislation and possess suitable and reliable means for the verification of employees' ages.
 - 13.1.6. Eliminate all discriminatory practices with respect to employment and occupation. To this effect, any distinction, exclusion or preference based on race, colour, gender, religion, political opinion, national or social origin, whose consequence is the nullifying or altering of equality with respect to opportunities or work in one's employment and occupation shall be considered to constitute discrimination.
 - 13.1.7. Maintain a preventative focus in the face of environmental issues in order to achieve sustainable development, limiting activities which may negatively impact the environment; and
 - 13.1.8. without prejudice to condition 14.8 combat corruption in all of its forms, including extortion and bribery. To this effect corruption will be understood to be the abuse of power (with which it has been entrusted) for private gain.
- 13.2. Without prejudice to condition 5.1.2, the Supplier agrees to comply with all applicable legislation in force, which is linked to the provision set out in this condition 13.
- 13.3. The Supplier agrees to notify the Company with regard to any situation in which a breach of the aforementioned principal is identified by the Supplier, including the Supplier's plan to remedy such a breach. The Supplier shall also provide a plan for the remedy of any breach of the aforementioned principles that is identified by the Company. In the event that corrective plans are not implemented, the Company reserves the right to terminate this Contract.
- 13.4. Where the Supplier, in the performance of its obligations under this Contract is authorised by the Company to sub-contract any of its obligations, the Supplier must ensure that all of its sub-contractors provide commitments to the Supplier that are substantially the same as those set out in this condition 13.
- 13.5 The Supplier will at all times during the period this Contract is in force, permit the Company to review the degree of compliance with the principals set out in the condition 13.

14 Miscellaneous

14.1 Force Majeure

Neither party shall be liable to the other for any total or partial failure, including interruption or delay in the performance of its respective duties or obligations under the Contract if such failure arises from or is attributable to a Force Majeure Event. Each party shall notify the other in the event it believes a Force Majeure Event will or is likely to affect the performance of its obligations. As soon as practicable after such notification, the parties will consult with each other in good faith and the party affected by the Force Majeure Event shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event to facilitate the continued performance of the Contract. The Company shall be entitled to terminate this Contract (without the Company having any liability to the Supplier) with immediate effect, by notice to the Supplier, in the event that a Force Majeure Event affects the Supplier's performance of all or any significant part of its obligations under the Contract for a period of seven (7) days or more.

14.2 Data Protection

The parties shall each comply with their obligations under the Data Protection Act 1998 ("DPA") and The General Data Protection Regulation 2016/679 ("GDPR") in relation to the processing of personal

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data by each of them in connection with performance of their obligations under this Contract. Where the Supplier processes personal data belonging to the Company and/or its respective customers, suppliers and/or agents in the course of supplying the Goods and/or Services, the Company shall at all times maintain the role of data controller and Supplier shall maintain the role of data processor of such data. The Supplier shall ensure that appropriate technical and organisational security measures are taken against accidental loss, destruction of, or damage or access to such personal data. Words and phrases which are defined in the DPA shall have the same meanings in this condition 14.2.

14.3 Entire Agreement

Subject to condition 2.3, this Contract constitutes the entire agreement between the parties with respect to the subject matter of this Contract and to the exclusion of any other terms and conditions. This Contract supersedes and replaces any prior written or oral agreements, representations (excluding fraudulent or negligent misrepresentations) and undertakings between the parties.

14.4 Waiver

Any failure or delay by the Company to enforce any of the Company's rights under the Contract shall not be construed as a waiver of the Company's rights. Any waiver of rights by the Company in relation to any breach of the Contract by the Supplier must be given in writing and shall not be construed as a waiver of the Company's rights in relation to any other breach (recurring or otherwise).

14.5 Alienation

The Supplier shall not be entitled to assign, novate, sub-contract or otherwise transfer any of the Supplier's rights and/or obligations under this Contract without the Company's prior written consent. The Company shall be entitled to assign, novate, sub-contract or otherwise transfer any of the Company's rights and/or obligations under the Contract and shall provide the Supplier with written notification of same.

14.6 Severance

If any or any part of the provisions of this Contract are found to be illegal or unenforceable, the other provisions and/or any remaining part of the relevant provision and the remainder of the Contract shall continue in full force and effect.

14.7 Variation

The Company may request a change to the timing, nature, description or extent of the Goods and/or Services to be provided at any time. Any change that is agreed must be in writing and shall be subject to the terms of the Contract. No variation to this Contract shall be binding upon the parties unless instructed in writing and signed by an authorised representative of the Company.

14.8. Prevention of Corruption

The Parties agree that:

14.8.1. Each party shall comply with all applicable laws, regulations, codes and guidance relating to anti-bribery and anti-corruption; including but not limited to the Bribery Act 2010 ("Relevant Requirements")

14.8.2. Each party shall have and shall maintain in place throughout the term of this Contract and enforce where appropriate its own policies and procedures to comply with the Relevant Requirements, including but not limited to adequate procedures under the Bribery Act 2010

14.8.3 without prejudice to condition 14.8.1 the Supplier shall not offer or agree to give any person working for, or engaged by the Company, any gift or other consideration which could act as an inducement, or reward for any act or failure to act in relation to the Contract, or other contract or agreement between the Company and the Supplier

14.9. Status

The Supplier is an independent contractor and nothing in this Contract shall create any employment, joint venture or similar relationship between the parties, or render the Supplier an agent or partner of the Company. The Supplier shall not have the power to bind the Company to any other obligation, other than under the Contract.

14.10 Notices

Any notice or other communication required to be given to a party under or in connection with this Contract must be in writing and must be delivered by registered post to the registered business address of the Company or to the last known business address or registered address of the Supplier.

14.11 Disputes

Where this contract is a "construction contract" as defined by the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction

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Act 2009 (“The Act”) any dispute under with this Contract Agreement shall be resolved by Adjudication in accordance with the Scheme for Construction Contracts (Scotland) Regulations 1998 as amended to the date of the Purchase Order. Any Adjudicator’s Decision shall be final and binding unless Arbitration is formally notified within 28 days of the Adjudicator’s Decision. The Parties shall seek agreement of an Adjudicator, failing which nomination shall be sought from the President of the RICS in Scotland. Any dispute shall be finally resolved by Arbitration under the Arbitration (Scotland) Act 2010 including all default rules therein. The seat of Arbitration shall be Edinburgh. The Parties shall seek agreement upon the appointment of an Arbitrator, failing which nomination shall be sought from the Chairman of the CI Arb Scottish Branch.

14.12 Applicable Law

The Law of Scotland shall apply to this Agreement.

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